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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 1004

KNIGHT MORLEY CORPORATION,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Knight Morley Corporation, petitioner herein, prays that a writ of certiorari issue to review the decree of the Court of Appeals for the Sixth Circuit entered in the above cause on December 18, 1957 (petition for rehearing denied February 13, 1958) enforcing an order of the National Labor Relations Board (hereinafter called the "Board") dated July 12, 1956.

OPINIONS BELOW

The Intermediate Report and Recommended Order of the Trial Examiner is unreported and is printed in the Joint Appendix filed in the Court of Appeals at page 430a. The decision and order of the National Labor Relations Board is reported at 116 N. L. R. B. 140 (No. 6) and is printed in the Joint Appendix filed in the Court of Appeals at page 489a. The opinion of the Court of Appeals dated December 18, 1957 on the Board's petition for enforcement and the opinion of the Court of Appeals dated February 13, 1958 on the Company's petition for rehearing are reported at 251 F. 2d 753 and are printed in Appendix A, *infra*, at page 1a.

JURISDICTION

The decree of the Court of Appeals on the Board's petition for enforcement of its order was entered on December 18, 1957 (Appendix B, *infra*, p. 13a).

A petition for rehearing was duly filed and was denied on February 13, 1958 (Appendices A and B, *infra*, pp. 10a and 13a). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and 29 U. S. C. 160 (e).

QUESTIONS PRESENTED

1. Whether, under Section 502 of the Labor Management Relations Act—1947, employees, who stop work and leave their jobs in violation of instructions but without striking and in protest against working conditions which are not believed by their employer to be dangerous but which are believed by the employees to be dangerous but without informing their employer of that belief, may prop-

erly be discharged for cause during the term of a collective bargaining agreement containing a covenant to settle, without work stoppage or lockout all disputes concerning working conditions under the agreed grievance procedure and also providing that failure to do appointed work or failure to comply with the agreed grievance procedure shall be a sufficient cause for discharge.

2. Whether a strike which is called by the union to enforce its demand that the employer settle a grievance by collective bargaining rather than in accordance with the grievance and arbitration procedure in effect at the time it arose and under which it was originally submitted and handled is an economic strike in which strikers may be replaced or an unfair labor practice strike in which strikers may not be replaced.

STATUTES INVOLVED

The relevant provisions of the Labor Management Relations Act, 1947 (29 U. S. C., Secs. 141 *et seq.*) are set forth in Appendix C, *infra*, page 15a.

STATEMENT

The Facts. In August of 1953 the petitioner, Knight Morley Corporation, operated a manufacturing plant at Richmond, Michigan, for the production of rear view mirrors, gas caps and similar automobile accessories with approximately 140 employees working on two shifts[1] (R. 4a, 75a, 90a, 439a).[2] Its production employees were repre-

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[1] The "day" shift worked from 7:00 A. M. to 3:30 P. M. and the "afternoon" shift from 3:30 P. M. to midnight (R. 90a).

[2] We use the designation "R" to refer to the printed joint appendix in the Court below which is contained in two volumes entitled Joint Appendix (pages 1a to 518a) and Supplement to Joint Appendix (pages 519a to 524a).

sented by the UAW-CIO under a collective bargaining agreement which was due to expire on September 25, 1953 and the parties were in the process of negotiating a new contract (R. 434a). This agreement provided that during its term there would be no strikes or other work stoppages by the employees or lock-outs by the employer and that if any of the employees engaged in a strike or work stoppage without union authorization it would promptly direct them to resume work. It further provided that all labor disputes, including disputes concerning wages, hours, working conditions and discharges would be handled and settled through the detailed grievance and arbitration procedure set forth in the contract and that pending such settlement there would be no interference with the company's instructions or orders even if contrary to the terms of the agreement. It also provided that the company would provide such safety devices and sanitary and healthful working conditions as are required by law and that insubordination, failure to do appointed work and failure to comply with the agreed grievance procedure would be sufficient cause for discharge (R. 434a-438a, 520a-524a).

Petitioner's manufacturing operations consisted of tool making, miscellaneous machining, stamping, die casting, plating, buffing and assembling (R. 75a, 439a). The buffing room occupied an area 80 feet by 25 at the northeast corner of the plant (R. 440a). It was ventilated by a continuous row of open windows along the 80 foot north wall and the 25 foot east wall and by two ceiling high openings into other portions of the plant, one 12 feet wide and the other 20 feet wide. A 24 inch high speed pedestal fan circulated the air from one end of the room to the other (R. 124a, 193a, 239a-240a, 363a, 440a, 450a).

There were thirteen buffing machines in the room and, in compliance with Michigan law,[3] the buffing wheels, which were made of layers of cotton impregnated with buffing compounds, were partially enclosed by hoods which were designed to trap a portion of the lint and dust thrown off by the wheels, the heavier particles falling on to the floor and the lighter particles being sucked through a system of piping to a cyclo-wash unit where the dirt is screened out (R. 81a, 83a-84a, 152a, 439a). The suction for this dust exhaust system was created by a centrifugal type paddle wheel fan situated in a housing on the top of the roof which had a capacity of 14,430 cubic feet of air per minute which was 60% in excess of the 9,000 cubic foot capacity required by law for the removal of dust from the buffing wheel hoods (R. 36a, 439a).

On Saturday, August 29, 1953, a new switchbox controlling the dust exhaust fan was installed and in the process the wires were reversed thereby causing the paddle wheel type exhaust fan to revolve in a reverse direction resulting in a loss of efficiency the amount of which was disputed but which the Trial Examiner found to be 75 per cent (R. 440a). The sequence of events which occurred prior to the discovery and correction of the reversed wires are set forth in their chronological order.

On Monday, August 31, the day shift of buffers noticed an unusual amount of dust and lint in the air and complained to their foreman that the dust exhaust system was not operating too well (R. 153a, 440a) . They all blamed it on the fact that the pipes were clogged with dirt as they had not been cleaned out on Saturday as was customary,[4]

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[3] Mich. Stat. Anno., Secs. 17.36-17.39; Act No. 285 of the Michigan Public Acts of 1909, as amended, Secs. 27-30 (R. 35a-37a).

[4] Saturday is a non-working day and petitioner had been unable to get any employees to come in to do the job (R. 88a, 441a).

and after working their minimum required paytime of two hours, they were sent home and the system was cleaned up (R. 87a-88a, 170a-171a, 441a).

When the afternoon shift of buffers reported for work they learned that the morning shift in their department had been sent home after working only two hours, and, before they started to work, their union local president told Mr. Morley, petitioner's president, that it was too hot a day to work[5] and that under the contract the afternoon shift was entitled to go home after working two hours the same as the morning shift. Mr. Morley replied that the day shift had not been sent home because of the heat but in order to clean the dust exhaust system which had not been cleaned on Saturday, that the buffing department production was necessary to keep the plant in operation, and that there was no reason why the afternoon shift should not work (R. 131a, 198a-200a, 364a-365a, 441a).

When the seventeen afternoon shift buffers commenced work at 3:30 P. M. by raking their wheels to level them off, they immediately noticed that the dust exhaust system was not operating as efficiently as it should with the result that an excess amount of dust and lint got into the air and stuck to their skin and clothes which on this unusually hot day made them feel disagreeable and uncomfortable (109a-112a, 126a, 138a, 142a, 189a, 325a, 338a). After working approximately an hour they informed the union steward, Joe Muniz, and the union president, Harry Harsch, both of whom were buffers themselves, that they didn't want to work under the prevailing conditions and asked them to see if something couldn't be done about the situation (R. 109a, 186a, 234a, 238a, 240a, 323a). The

[5] The buffers had noted thermometer readings as high as 98 degrees on their way to work and testified that a thermometer on one of the buffing machines registered 110 degrees (118a, 125a, 441a).

complaint that the dust exhaust system wasn't working as efficiently as it should was passed on to the management and, in the absence of the regular maintenance crew who worked only on the day shift, Mr. Wiswell the shop foreman, Mr. Hicks, the plant superintendent, and Mr. Morley, the company president, all came to the buffing room and checked the system over as best they could. They rechecked the water level in the cyclowash unit, they checked the pipes for dirt, they heard the exhaust fan on the roof operating normally, they made smoke tests which indicated that there was suction in the pipes, and they were unable to find anything wrong with the system, which, as far as they could see, was functioning the same as always and they so informed the buffers (R. 90a-91a, 234a-236a, 406a-409a, 44?a, 449a-450a). When the supervisory group left the room the buffers discussed the situation and decided that they would not work with the dust exhaust system operating as it was and would go home until it was fixed (R. 187a, 189a, 324a, 443a).

In the past it had been customary to permit the buffing department employees to stop work on those occasions when the dust exhaust system had completely stopped running and to send them home if it couldn't be started (R. 93a, 115a-116a, 189a-190a), but it was also customary for the men to continue working when there was a dispute regarding the efficiency of the system while it was settled in accordance with the grievance procedure of the labor contract, and such a grievance had been so handled just a year previously (R. 37a-38a, 86a).

As the buffers were preparing to leave, Mr. Hicks and Mr. Morley both informed them that if they stopped work and went home without permission they would be violating both the company rule against leaving work without permission and the union contract and would be discharged

(R. 91a-92a, 187a, 238a, 411a, 444a). At approximately 5:15 to 5:30 P. M., without company or union approval they shut down their machines and walked out in protest against the inefficient operation of the dust exhaust system and were discharged (R. 92a, 189a, 191a, 195a, 412a, 444a). Two or three employees from other departments, all of which continued to work, were transferred to the buffing department where they finished out the shift (R. 95a, 365a-366a).

The following day the dispute over the efficiency of the dust exhaust system continued, with the day shift buffers claiming it was not up to standard and Mr. Morley that it was operating normally, and no one actually knowing the answer (R. 155a, 174a, 413a). A union committee suggested that a health inspector be called to check the system to which Mr. Morley agreed and also said he would check it with an air indicator, but at 3:30 P. M. the crossed wires in the switchbox were discovered by the maintenance crew and the dust exhaust system was restored to its full efficiency (R. 97a, 175a, 415a, 444a). The day shift, with the conditions of work the same as on the previous day, continued at work, excepting for one man, and permitted their grievance to be settled under the procedure prescribed in their labor contract, and their production was above normal (R. 174a-177a, 367a-369a).

Although four of the eight afternoon shift buffers who testified at the trial asserted that when they walked out they believed that the breathing of particules of dust would not be good for their health (R. 116a, 142a, 188a, 325a), they admittedly did not inform management of this belief or otherwise make any claim that they considered the conditions for work to be unhealthy or dangerous or that they were refusing to work for this reason (R. 137a, 145a). No toxic materials were used in the buffing operations (R. 366a,

439a), and Mr. Fredericks, the industrial health expert witness for the Board, testified without contradiction that even if the dust exhaust system had not been operating at all, the resulting dust conditions would not place the health of the buffers in any immediate danger, and would cause nothing more than minor irritations or discomfort, and that only prolonged exposure to such conditions over a period of years would be detrimental to health of the workers (R. 289a, 292a, 458a).

Mr. Fredericks also testified that exposure of workers to heat conditions of 110 degrees would subject them to danger of heat disease within a matter of one to three hours (R. 296a-306a) and that if the petitioner's dust exhaust system had been operating at full efficiency it would have had the incidental effect of drawing air into the buffing room through any openings (R. 278a) and, assuming that it would bring in 13,500 cubic feet per minute of 96 degree outdoor air the temperature in the buffing room would not have been above 100 degrees, but that if there were large openings into other portions of the plant in which were located hot plating tanks and die cast furnaces, then his answer would be different and he could not forecast the result, but that air drawn from the plating room into which the buffing room opened could reasonably be expected to increase its temperature rather than decrease it (R. 307a, 312a-316a).

Mr. Fredericks was not informed that, during the hour and three quarters that the buffers worked on the afternoon shift on August 31, 1953), they admittedly were at liberty to and did go outdoors to refresh themselves (R. 327a, 338a-339a), nor was he informed, as testified by Mr. Morley without contradiction, that during the afternoon of August 31 the temperature both inside and outside the plant had noticeably decreased and at the time of the walk-

out the temperature inside the plant including the buffing room had fallen 18 to 20 degrees (R. 359a, 405a). The official weather bureau report showed a similar drop during the same period of time at the Detroit City Airport thirty miles southeast of Richmond (R. 361a, 456a).

The buffers not only admittedly did not inform management that they considered the conditions for work to be unhealthy or dangerous because of the heat in the buffing room or that they were refusing to work for this reason (R. 137a, 145a), but did not even claim at the trial that they considered the heat in the buffing room to be unhealthy or dangerous, their sole claim at the trial being that at some time after 3:30 P. M. the temperature in the buffing room reached 110 degrees (R. 118a) and that this together with the dust and lint made them uncomfortable (R. 189a).

There was no evidence offered as to whether any of the seventeen discharged buffers were or were not members of the union, with the exception of Mr. Harsch, the union president, and Mr. Muniz, a union steward (R. 183a, 233a), nor did anyone claim or assert that Mr. Morley or any of his supervisory personnel had ever evidenced any anti-union animus.

The discharge of the buffers was processed by the union and the company through the first four steps of the grievance procedure contained in the labor contract during which the union rejected the company's offer to reinstate the buffers without the back pay demanded by the union (R. 221a, 261a-263a). On September 18 a formal written grievance was filed by the union demanding the reinstatement of all the buffers with back pay, which was rejected by the company on the ground that the buffers were properly discharged under the contract for failure to do appointed work and failure to comply with agreed grievance procedure (R. 49a-50a, 209a, 213a-214a). The union did not elect to sub-

mit the matter to arbitration as provided in Step 5 of the grievance procedure (R. 219a, 258a-259a), but after the labor contract expired on September 25 demanded that the company settle the buffer grievance to the satisfaction of the union by collective bargaining or they would strike the plant (R. 249a). The company remained adamant in its position that if the union desired further consideration of that or any other grievance arising under the contract they should request arbitration and on September 30 a strike was called and eighty-six or approximately two-thirds of petitioner's employees walked out on strike (R. 214a, 249a, 461a).

One of the 86 strikers testified that he overheard Mr. Morley tell the strikers that "they were walking out of a job" (R. 176a) and on the following day, October 1, a letter was sent to the strikers asking them to return to work by October 5th or they would be considered to have quit and would be replaced (R. 39a), and shortly thereafter petitioner declined the union's request that petitioner pay out of its own pocket the premiums necessary to keep the group insurance of the striking employees alive and cancelled the insurance as required under the policy (R. 41a, 43a-44a, 106a-107a, 416a-419a).

At a negotiating meeting held on October 14 petitioner's attorney raised a question as to the status of the union and the striking employees (having in mind the right asserted in its letter of October 1 to replace those who remained on strike) but no satisfactory conclusions were reached and petitioner continued to negotiate with the union as the bargaining representative of its employees and at all times has been willing to negotiate with it on the terms of a new contract. The union continued to refuse to negotiate with petitioner regarding the terms of a new contract and the termination of the strike unless petitioner would

also agree to negotiate regarding a number of grievances, including the discharge of the buffers, and when the petitioner refused to recede from its position that it was not required to negotiate regarding grievances subject to settlement under the grievance and arbitration provisions of the contract, further negotiations broke down (R. 251a-253a, 261a, 470a-471a, 476a).

While the strike was in progress a great many of the strikers were replaced by new employees or their jobs eliminated by changes in operations (R. 47a-48a, 428a).

Four of the strikers testified that while the strike was in progress they were refused reinstatement to their jobs by petitioner but there was no evidence offered that their jobs had not been filled and three of the offers were conditioned upon the ending of the strike and picketing (R. 242a, 342a-343a, 396a-397a), and when the strike was officially called off by the union on June 12, 1954, and an unconditional offer to return to work made on behalf of the strikers all those who desired to return and whose jobs had not been filled by replacements or eliminated by changes in operations were reinstated (R. 45a-48a, 60a-61a, 395a-396a, 428a).

The decisions of the Trial Examiner, the Board and the Court of Appeals. The petitioner was charged with committing three unfair labor practices in discharging the buffers on August 31 and insisting that the matter be handled as a grievance under the collective bargaining contract (R. 9a, 23a-25a).

The first was that the buffers were engaged in a protected concerted activity under Section 7 of the Act and therefore their discharge was an unfair labor practice under Section 8 (a) (1); the second was that their discharge was discriminatory in violation of Section 8 (a) (3); and the third was that by insisting that the matter be handled as a grievance

the petitioner was refusing to bargain in violation of Section 8 (a) (5).

As to the first and second charges the Court of Appeals affirmed the decision of the Trial Examiner and Board that inasmuch as Section 502 of the Act gave the buffers the right to stop work if they believed in good faith, even though mistakenly, that conditions for work were abnormally dangerous their work stoppage, even though not a strike, was a protected activity under Section 7 and their discharge was an unfair labor practice under Sections 8 (a) (1) and (3) entitling them to be reinstated with back pay and that it was immaterial and no defense that they did not inform the petitioner that they were stopping work because of such a belief even though they had agreed through collective bargaining to handle all grievances pertaining to working conditions as well as discharges through the grievance and arbitration procedure provided in the contract without stopping work (App. A, *infra*, 6a-9a; R. 452a-460a, 477a-478a, 509a).

As to the third charge above referred to the Court of Appeals, reversing the Board and affirming the trial examiner, held that the discharge of the buffers was a grievance to be settled through the grievance and arbitration procedure agreed upon in the collective bargaining agreement even after the expiration thereof and therefore petitioner had not violated Section 8 (a) (5) of the Act on October 14 by refusing to bargain thereon with the union. (App. A, *infra*, p. 9a; R. 467a-477a, 504a-506a).

In spite of this holding the Court of Appeals affirmed without discussion the finding of the Trial Examiner and the Board that the strike of September 30 was an unfair labor practice strike because the discharge of the buffers was one of the causal factors (App. A, *infra*, p. 10a; R. 460a, 466a, 500a-501a). This holding is determinative of

the remaining charges all of which involved conduct which would be legal and proper if the strike was an economic strike in which petitioner would have the right to replace striking employees.

The Court of Appeals affirmed without discussion the decision of the Trial Examiner and the Board that the petitioner violated Section 8 (a) (1) and (3) of the Act by threatening to replace the strikers if they walked out, by notifying them that they would be replaced if they did not return by October 5, by refusing to reinstate those who applied for reinstatement without regard to their previous replacement during the strike, and by refusing to reinstate replaced strikers at the conclusion of the strike, and petitioner was ordered to reinstate all strikers with back pay from the time they applied for reinstatement without regard to the fact that they had been replaced (App. A, *infra*, p. 4a, 10a; R. 460a-466a, 478a-479a, 499a-502a, 509a).

It was also charged that petitioner violated Section 8 (a) (5) of the Act on October 14 by questioning the union's status as representative of the striking employees many of whom were being replaced. The Trial Examiner held there was no violation because petitioner at all times remained willing to negotiate regarding a new contract and that it was the union which refused to do so (R. 476a-477a). The Board reversed the Trial Examiner and the Court of Appeals affirmed the Board without comment (App. A, *infra*, 10a; R. 506a-507a). As this charge also involved the petitioner's right to replace strikers it, like all the other findings, is dependent upon a determination of the questions involved in this appeal and in particular whether the strike of September 30 was an economic strike in which the strikers may be replaced or an unfair labor practice strike in which they may not be replaced.

The jurisdiction of the Board to entertair the unfair practice charges rests upon the proven and conceded engagement of petitioner in interstate commerce.

REASONS FOR GRANTING THE WRIT

This case presents substantial questions of wide public importance and great practical interest to both employers and employees in the field of collective bargaining and labor relations under the Labor Management Relations Act—1947 and the lower court's decision is in conflict with decisions of this Court and of Courts of Appeals.

A. As to the Section 502 Question

The decision of the Court below is based primarily upon a novel interpretation of the intent and meaning of a heretofore obscure clause in Section 502 of the Act which has never before been interpreted by either the Board or the Courts to have the intent and meaning given to it by the decision in this case which is in direct conflict with three basic principles pertaining to the rights and obligations of employers and employees under the Act which have heretofore been universally recognized and enforced by both the Board and the Courts and also with specific decisions of other Courts of Appeals as well as this Court.

The clause in question provides that "the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees [shall not] be deemed a strike under this Act" (App. C, *infra*, p. 16a).

1. The decision in the Court below holds that under this clause employees are engaged in an activity pro-

tected by Section 7 of the Act if they *stop work without striking to enforce their demands pertaining to conditions of work* which they believe to be dangerous but which are not believed to be dangerous by management. This holding is not only in conflict with the well established principle that an attempt on the part of employees to remain at work on their own terms and conditions or while guilty of insubordination is not the kind of activity which is protected under Section 7 of the Act and they may properly be discharged for cause,[6] but is also in direct conflict with the decision of the Court of Appeals for the Seventh Circuit in *National Labor Relations Board v. Kohler Company*, 220 F. 2d 3, 10, which involved the discharge of twelve employees who walked out without striking in protest against the shutting off of fans installed for their protection against the excessive heat from the furnaces in the enameling department which they claimed resulted in abnormally dangerous conditions for work and which did in fact cause a number of employees to become ill. Both the Board and the Court of Appeals in the *Kohler* case concluded, in contrast with the holding in the case at bar on indistinguishable facts, that "the men could not insist on remaining at work on their own terms and conditions" and therefore they were not engaging in a protected activity and they were properly discharged.

The suggestion in the opinion of the Court below that in the *Kohler* case Section 502 was not relied upon or construed and is distinguishable on the facts is, we submit, erroneous. The *Kohler* case was actually a stronger case on the facts than the case at bar for claiming that their

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[6] *N. L. R. B. v. Local Union No. 1229*, 346 U. S. 464; *International Union, UAW, v. Wisconsin Employment Relations Board*, 336 U. S. 245; *Home Beneficial Life Insurance Co. v. N. L. R. B.*, 159 F. 2d 280, cert. denied 332 U. S. 758; *N. L. R. B. v. Montgomery Ward & Co.*, 157 F. 2d 486; *C. G. Conn, Ltd. v. N. L. R. B.*, 108 F. 2d 390.

work stoppage was protected under Section 502 for in that case the employees not only informed management that they considered the conditions of work to be dangerous (which they did not do in the case at bar), but a number of them, including those that were discharged, actually became ill as a result of the excessive heat and received medical attention. As to the suggestion that Section 502 was not relied upon or construed the fact is that not only did the Board itself reject the discharged enamelers' contention that they were protected in their walkout under Section 502 of the Act as "lacking in merit," but on their appeal to Court of Appeals for the Seventh Circuit the principal argument in their brief was entitled "The Action of the Petitioners is Protected by Section 502 Title V of the National Labor Relations Act" and the General Counsel for the National Labor Relations Board filed his brief in opposition and, without disputing the fact that the enamelers walked out because of abnormally dangerous conditions, argued that their conduct derived no protection from Section 502, that Section 502 was not intended to have any bearing on Section 7, and that "the employees' argument would logically lead to the conclusion that every concerted quitting of labor in the circumstances provided in Section 502 would be protected, regardless of the means through which it is effectuated." In holding as it did the Court of Appeals for the Seventh Circuit obviously upheld the construction given to Section 502 by the Board and its General Counsel which is precisely the opposite of the position taken by the Board and its General Counsel in the case at bar.

2. The decision of the Court below also holds that under Section 502 of the Act employees are engaged in a protected activity if they stop work to enforce their demands pertaining to conditions of work which they be-

lieve to be dangerous but which are not believed to be dangerous by management *even though they have entered into a collective bargaining agreement containing a covenant to settle without work stoppage or lockout all disputes concerning working conditions under the agreed grievance procedure* and also providing that failure to do appointed work or failure to comply with the agreed grievance procedure shall be a sufficient cause for discharge. This holding is not only in conflict with the well established principle that employees through collective bargaining may legally surrender their right to engage in activities protected by the Act and in fact are encouraged to incorporate in such contracts procedures for the settlement of disputes arising thereunder concerning such matters as conditions of work, and work stoppages in violation of such agreements are not protected activities,[7] but is also in direct conflict with the decision of the Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. American Manufacturing Company of Texas*, 203 F. 2d 212, which involved the discharge of twelve foundry coremakers who complained that the operation of rattlers[8] while they were at work in the immediate area[9] created dangerous conditions for work because of the flying dust which was injurious to their health and because the noise was such as to prevent them from hearing warning

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[7] *Mastro Plastics Corp. v. N. L. R. B.*, 350 U. S. 270, 281; *N. L. R. B. v. Rockaway News Co.*, 345 U. S. 71; *N. L. R. B. v. Sands Manufacturing Co.*, 306 U. S. 332.

[8] "Rattlers" are revolving vessels in which metal castings are placed and rotated so as to smooth their surfaces and remove sand.

[9] They had previously been operated only during the other shifts when there were no employees in that area.

signals on the overhead crane.[10] Their labor contract contained a provision similar to paragraph 54 in the case at bar (R. 524a) requiring the employer to maintain healthful working conditions ad safety devices and also required complaints regarding such matters to be investigated promptly and corrective measures taken within a reasonable time. (In the case at bar Step 3 of the grievance procedure allows the company 24 hours.) The superintendent to whom the complaint was made promised to investigate but the rattlers continued to operate for the balance of the shift. When they were again placed in operation the following day the twelve coremakers stopped work and informed the management that they would not work with the rattlers running, whereupon they were ordered to either return to work or be discharged. Twelve of the coremakers left and were discharged and the following day the entire plant struck in protest. The twelve coremakers and forty of the strikers were replaced by new employees and denied reinstatement.

Just as in the case at bar, the controlling issue was whether the discharge of the twelve buffers was a concerted activity protected under the Act. The Court of Appeals, reversing the Board, found that it was not and consequently the resulting strike was an economic strike rather than an unfair labor practice strike, and the discharged coremakers and the replaced strikers were not entitled to reinstatement or back pay as ordered by the Board.

The basis of the Court's ruling was that under the labor contract the employer was entitled to a reasonable time to investigate and correct the grievance and take

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[10] The hazards involved are set forth in greater detail in the Board decision at 98 N. L .R .B. 226.

corrective measures, and as the action of the coremakers in stopping work was inconsistent with this agreement it was not protected activity under the Act. This is also a stronger case for protection under Section 502 than the case at bar for just as in the *Kohler* case the employer was clearly informed that the employees were stopping work because they believed the conditions for work were abnormally dangerous whereas they did not so inform the petitioner in the case at bar.

3. The decision of the Court below also holds that under Section 502 of the Act employees are engaged in a protected activity if they stop work to enforce their demands pertaining to conditions of work which are not believed by the employer to be dangerous, but which are believed by the employees to be dangerous *even though they do not inform their employer that they have that belief or are stopping work for that reason*, and having been discharged are entitled to reinstatement and back pay.

This holding is in direct conflict with numerous applicable decisions of this and other Courts of which the best known and most often cited is *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, in which the Court at pages 45-46 set forth a principle which has been cited and followed on numerous occasions:

> "The Act does not interfere with the normal exercise of the right of the employer to select its employees or discharge them. The employer may not, under cover of right, intimidate or coerce its employees with respect to their right to self organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts."

In *National Labor Relations Board v. Stafford*, 206 F. 2d 19, the Court of Appeals for the Eighth Circuit said at page 22:

> "The fact in issue is the intent, motive or reason in the respondent's mind for the discharge of the complainants."

Even if Section 502 of the Act is construed to mean that employees are engaged in a protected activity if they stop work in the belief that conditions for work are dangerous, how would an employer, who did not himself believe the conditions to be dangerous, know that they were engaging in a protected activity if they did not inform him that they stopped work because of such a belief? So far as the employer is concerned they would simply be refusing to work and would be subject to discharge for cause.

Congress itself has attempted to protect the employer in such a situation by providing in Section 10 (c) of the Act that "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

The holding in the case at bar is in direct violation of this clause for, if petitioner was not informed and did not know that the buffers were refusing to work for any reason that would make their conduct protected under the Act, then the refusal of the buffers to continue working is in itself proper cause for discharge.

The construction given to the intent and meaning of Section 502 of the Act by the decision of the Court below is not only in direct conflict with the decisions of other Courts of Appeals and of this Court as above set forth

but constitutes a serious departure from the recognized rules and principles pertaining to the collective bargaining relationship under the Act and the rights and obligations thereunder of both employers and employees which have been uniformly recognized by the Courts.

B. As to the "Unfair Labor Practice Strike" Question

The decision of the Court below makes two holdings which are mutually untenable and completely inconsistent as a matter of law. The strike of September 30 was called by the union for the sole purpose of enforcing its demand that the petitioner settle a number of grievances, including the grievance concerning the discharge of the buffers, which arose under the contract by collective bargaining and as a part of the negotiations for a new contract rather than in accordance with the grievance and arbitration procedure agreed upon in the contract which had expired (R. 249a).

The Court of Appeals, reversing the Board, held that such grievance should properly be handled and settled under the grievance procedure and that the petitioner had no obligation to bargain on such matters (App. A, *infra*, p. 9a).

However the Court below at the same time affirmed without comment the Board's ruling that the strike of September 30 was an unfair labor practice strike (App. A, *infra*, p. 10a). Inasmuch as the only basis for the Board's holding that the strike was an unfair labor practice strike rather than an economic strike was its ruling that the strike was in part caused by petitioner's refusal to settle the pending grievances by bargain which the Board had found to be an unfair labor practice on the part of the petitioner.

The Court of Appeals having now ruled that this refusal was not an unfair labor practice there is no longer any basis for holding that the strike, which was called to enforce that illegal demand, is an unfair labor practice strike for the only remaining issues which the strike was called to settle were economic.

To say that petitioner is not guilty of an unfair labor practice in refusing to submit to the union's demand that it settle past grievances by bargaining but that a strike called to enforce that illegal demand is an unfair labor practice strike is a legal inconsistency.

We therefore submit that the holding of the lower Court that the strike of September 30 is an unfair labor practice strike is in direct conflict with its own holding in this case and also with the decisions of this Court holding that strikes which are not caused by unfair labor practices are not unfair labor practice strikes of which one is *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333.

It is submitted that this question presents not only an issue of substantial importance in the administration of the Labor Management Relations Act—1947 but the conflict above set forth should be resolved .

CONCLUSION

The processing of raw materials and the use of machinery in industry inherently involve some exposure of workers to dangers of which dust and heat are two of the most common. The lessening of such dangers by protective devices are the constant concern of management, labor and the governing authorities, but it is inevitable that disputes will arise concerning the efficiency of such devices and the existence of such conditions. The Federal Government has encouraged management and labor to agree in advance to settle such disputes by orderly procedures without disrupting operations. If workers can ignore such agreements and refuse to continue working, as the decision in this case holds, on the basis of a unilateral determination, not concurred in by management, that conditions for work are dangerous or that the safety devices provided are inadequate or inefficient, then it would be fruitless to provide for the orderly handling of such disputes through prescribed grievance procedures and there would be no inducement for management to incorporate such procedures in their collective bargaining agreements.

If, moreover, employees could leave their jobs at any time in protest against working conditions but without even informing management that they believed such conditions to be dangerous and be protected against discharge for insubordination and recover all wages lost if they at some later date asserted that they did believe the conditions to be abnormally dangerous at the time they walked out and were discharged, it would not only be impossible for employers to enforce normal discipline, but would, for all practical purposes, destroy the right of management to discharge employees for cause and put the

employer at the mercy of the discharged employees who could regain their jobs and subject their employer to the frightful penalty of reimbursing them for all lost wages by the mere expedient of asserting that when they walked out they did believe that the conditions for work were dangerous. It is obvious that an authoritative and final answer to these questions is of the most vital concern to every employer and employee who are attempting to work within the framework of the Labor Management Relations Act and who must continually make decisions which are dependent on that answer.

It is respectfully submitted that the holding below on the above questions is not only in direct conflict with decisions of this Court and of other Courts of Appeals but also that the implications of the Court's holding are so far reaching and affect so many persons and involve such basic features of Federal jurisprudence that review by this Court is warranted and this petition for certiorari should be granted.

JOHN F. LANGS,
Attorney for the Petitioner,
Knight Morley Corporation.

RICHARD F. MOLYNEAUX,
LANGS, MOLYNEAUX & ARMSTRONG,
Of Counsel.

May, 1958.

APPENDIX A

No. 13116

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

National Labor Relations Board,
Petitioner,
v.
Knight Morley Corporation,
Respondent.

Decided December 18, 1957
Rehearing Denied February 13, 1958

Before SIMONS, Chief Judge, and ALLEN and MCALLISTER, Circuit Judges.

ALLEN, Circuit Judge. This case arises on petition for enforcement of a decision and order of the National Labor Relations Board which held that respondent had violated Section 8(a)(1)(3) and (5) of the Labor Management Relations Act, 1947, 29 U. S. C., Section 141 et seq., and ordered reinstatement with back pay of certain employees whom it found to have been improperly discharged.

While the material evidence is in sharp controversy, the trial examiner and the Board found, based upon substantial testimony, the following facts:

Respondent operates a manufacturing plant at Richmond, Mich., engaged in the production of rear view mirrors and other automobile accessories. Its bargaining contract with the union, CIO, contained a no-strike clause. Under Mich. Stat. Ann., Sections 17.26 and 17.36 to 17.39, respondent was required to provide in its buffing room exhaust fans for the purpose of carrying off dust from emery wheels and grinders and dust-creating machinery. Sections 17.36 and

17.37 read together require that blowers and hoods be provided to protect the persons using buffing wheels from dust produced thereby and to catch and dispose of the dust thrown off by centrifugal force.

The initial difficulty in the immediate case arose out of the breakdown of respondent's blower system in its buffing room. Beginning Friday, August 21, 1953, the blower, which when in operation properly sucked up much of the dirt, dust, lint and abrasives thrown off in the buffing process, was out of order on various occasions. Serious trouble arose on August 28 when a fire destroyed the switchbox which controlled the blower. On Saturday, August 29, a new switchbox was installed but in this operation the wires of the motor were reversed. This caused the fan to run in reverse so that there was not enough suction in the blower system to draw off the waste material resulting from the polishing and buffing. On Monday, August 31, because of this situation, the morning shift of buffers was sent home after two hours work. The blower pipes were immediately cleaned, but in the afternoon of August 31 the blower still blew dirt, grit and abrasives into the men's faces, irritating eyes, ears and throats. On this day the temperature was from 96° to 98° in the shade and the atmosphere was very humid. A thermometer inside the buffing room showed the temperature there to be 110°. The buffers complained through their union steward and the union president to their foreman and to management. Respondent's president, Morley, made a cursory examination, putting his hand near the wheels of some of the buffing machines. He testified that the blower sucked in smoke from his cigar. Morley concluded that the blower was operating properly and rejected a suggestion from an experienced employee that the wires should be reversed. It was shown by the great weight of the testimony that the blower system on this day did not dispose of much of the dirt. The buffers, through their union steward and president, asked permission to stop working, but were told that they must continue and that anyone who left the plant would be discharged. All 17 of the afternoon buffers walked out of the plant at 5:15 p. m. Several of them testified at the hearing that they believed

it would be injurious to their health to work under the conditions of the heat and dust.

On the morning of September 1 there was no improvement in the operation and the rest of the men threatened to leave if the blower was not fixed. One buffer, Herbert Fox, was told to quit if he wanted to lose his job and he immediately quit. Thereafter Morley had the wires changed to the proper position. The blower then operated normally. When the afternoon buffers returned to work September 1 they learned that they had been discharged.

At the time the union was in process of negotiating a new contract with respondent, the original contract being due to expire on September 25, 1953. The union protested discharge of the 17 buffers and, in accordance with its collective bargaining contract which established a detailed grievance procedure, it submitted a formal written grievance with reference to the matter. As to this grievance, the first four steps of the grievance procedure were followed by the parties, but neither party receded from its position, respondent asserting that the buffers had been discharged for violation of proper management orders. Under step 5 of the grievance procedure it was optional with the parties to proceed to arbitrate. Neither party pursued arbitration to settlement of the particular controversy. Upon the ground that the grievance procedure should have been followed to its ultimate conclusion, respondent refused to bargain on matters relating to the buffers' discharge in connection with negotiations for a new collective bargaining contract.

No meeting was held with respondent after September 25 and on September 30 two-thirds of the employees walked out on strike, although Morley sent them word and also told them personally that they would be discharged if they ceased work. Respondent then notified all strikers to return to the plant by October 5 and, as to those who did not return, cancelled group insurance and treated their employment as terminated.

The Board found that the buffers quit work in good faith because of abnormally dangerous working conditions and that respondent violated Section 8(a)(1) and (3) of the Act in discharging them. It decided that in spite of the no-strike provision of the bargaining contract the cessation of work by the 17 buffers was protected under Section 502 of the Labor Management Relations Act of 1947, 29 U. S. C., Section 143, the pertinent portion of which provides that "the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees" shall not be "deemed a strike under this Act." The Board also decided that respondent violated the statute by discharging 86 other employees who struck in protest against respondent's unfair labor practice; in dismissing the buffers and in refusing to reinstate certain employees who applied for reinstatement; and by threatening to discharge its employees if they went out on strike. Lastly the Board found that respondent violated Section 8(a)(1) and (5) of the Act by refusing to bargain with its employees' union representative in regard to the discharged buffers' grievance, and by insisting that any new contract apply only to employees who had not struck.

We deem it unnecessary to discuss every point raised by astute counsel for respondent. The contention that the Board improperly found that respondent, in violation of Section 8(a)(1) of the Act, threatened to discharge several employees if they joined the strike of September 30, was raised neither before the trial examiner had issued his intermediate order nor before the Board and therefore we do not consider it. Section 10(e). Cf. *Federal Power Commission v. Colorado Interstate Gas Company*, 348 U. S. 492, 497-502; *National Labor Relations Board v. Vulcan Forging Company*, 188 Fed. (2d) 927, 929-30 (C. A. 6).

The Board's decision depends largely upon questions of fact as to which it made findings which are vigorously attacked by respondent. The findings are sustained by substantial evidence upon the record considered as a whole and in general the Board must be sustained.

Respondent contends that the discharge of the buffers held to be wrongful cannot be considered because respondent had no notice until the filing of the amended complaint on July 30, 1954, of the charge that the buffers' cessation of work on August 31, 1953, was protected under Section 502 because the 17 buffers in good faith believed that conditions in their workroom were abnormally dangerous. The charge filed October 14, 1953, complained that on Monday, August 31, respondent discharged its employees in the buffing room because of their activities "in attempting to obtain correction of a faulty blower system." The amended charge filed December 11, 1953, set up that respondent, on or about Monday, August 31, 1953, discharged "all its employees in the buffing room because of their concerted activities in attempting to obtain correction of a faulty blower system." Both charges were filed within the six-month period specified in 29 U. S. C. Section 160(b).

The purpose of a charge is to set in motion the machinery of an inquiry. *National Labor Relations Board v. Westex Boot & Shoe Co.*, 190 Fed. (2d) 12, 13 (C. A. 5), *National Labor Relations Board v. General Shoe Corporation*, 192 Fed. (2d) 504, 505 (C. A. 6). The charge is not a pleading. *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 318 U. S. 9; *National Labor Relations Board v. General Shoe Corporation, supra*, 505; *Kansas Milling Co. v. National Labor Relations Board*, 185 Fed. (2d) 413, 415 (C. A. 10). The strictness of formal pleadings should not be required therein. *Kansas Milling Co. v. National Labor Relations Board, supra; National Labor Relations Board v. Kingston Cake Co., Inc.*, 191 Fed. (2d) 563, 567 (C. A. 3).

Obviously both charges related to the entire transaction with reference to the faulty blower and the conditions which it produced in the buffing room, including the cessation of work by the 17 buffers. *National Labor Relations Board v. Kohler Company*, 220 Fed. (2d) 3, 7 (C. A. 7). Under the Regulations, Section 102.14, the union was required to serve respondent with a copy of the charges and the regional director "as a matter of course" was instructed to mail copies to respondent. Under Section 101.4 respondent

was "asked to submit a written statement of his position in respect to the allegations" in the charge. As respondent does not deny having received a copy of the charges, under the established presumption as to regularity of proceedings required by statute, we assume that respondent was properly served with the charge and amended charge. It certainly had notice of the union's complaint as to conditions in the buffing room and, of course, had notice of the application of Section 502 to this situation.

Respondent also urges that there was no competent testimony as to physical conditions inside the buffing room on the afternoon of August 31. However, the heat was shown to be 110° by thermometer, the humidity was stated to be great, and it was shown that the humidity was increased by the failure of the blowers to change the air. It was competent for the buffers themselves to testify to these physical conditions and to the lack of evaporation in the room. Laymen may testify as to physical conditions which they themselves have observed. *Robert T. Lincodn v. Central Vermont Railway Company,* 82 Vt. 187. This rule applies to statements as to temperature, the state of the weather, and dampness. *Leopold v. Van Kirk,* 29 Wis. 548. *Curtis v. The Chicago & Northwestern Railway Company,* 18 Wis. 327.

Another point of attack was the claim that the record presented no competent testimony as to the fact found by the Board that conditions in the buffing room were "abnormally dangerous." These conditions were testified to by Dr. William Fredrick, an industrial health expert, who had made this his life work since he graduated in 1936 from the University of Michigan with a Doctor of Science degree. Dr. Fredrick was highly qualified, having been a past officer of the American Industrial Hygiene Association, a fellow of the American Public Health Association and past president of its Industrial Hygiene section, a member of the American Chemical Society, the American Association for the Advancement of Science, the Association of Analytical Chemists, and the Engineering Society of Detroit.

Respondent contends that only a physician could rightly testify with reference to the danger to health arising from the failure of the blower to operate under the conditions presented. No decision is cited in support of this contention.

Industrial hygiene is the science and art of insuring healthful conditions of work, and the prevention of occupational diseases or injury to health arising out of methods of work. While perhaps only a physician could testify as to diagnosis of disease, lay witnesses may testify as to the existence of disease, or as to conditions producing disease which fall within their immediate knowledge and experience.

The possibility that actual disease may be caused by conditions in plant and in industrial operations is emphasized in this case by the fact that the Michigan statute requires the installation of the blower involved here. This is due to the well-known tendency of grit and abrasives such as Tripoli (used in respondent's plant) to cause diseases of the lungs. Dr. Frederick's testimony was rightly admitted.

Dr. Frederick testified in substance that under the conditions of heat and excessive humidity described as existing in the buffing room, combined with faliure of the blower, working conditions were dangerous to health. He stated that with the wires on the blower reversed it was reasonable to assume that the blower's efficiency was decreased from 70% to 80%. He said he had personally known of such cases in which the efficiency of the blower went to zero. Assuming such a reduction in blower efficiency, it was shown that air changes in the buffing room would be reduced from about 36 per hour to between 6 and 7 per hour. Due to the reversal of the blower fan, Dr. Fredrick stated, the suction would be reduced to practically zero at the buffer hoods. Heat generated inside the buffing room by numerous motors substantially increased the temperature. Under such circumstances Dr. Fredrick expressed the opinion that employees working in the buffing room might within two or three hours experience acute effects of some form of heat disease, such as heat prostration or heat stroke, and that even more serious results might follow if work were con-

tinued. It was clearly shown that the failure of the blower directly affected not only the accumulation of dust, grit, and dangerous abrasives, but also the temperature and humidity in the buffing room. This was substantial testimony to the effect that the conditions might reasonably be considered "abnormally dangerous." Cf. *National Labor Relations Board v. Southern Silk Mills, Inc.*, 209 Fed. (2d) 155 (C. A. 6). As the men left the room after one hour and forty-five minutes of work, the fact that none of them collapsed is not decisive as to the physical conditions.

Respondent also urges that the Board's decision on this point was erroneous because under the Michigan statute the blower was not required to effect ventilation. It is true that the statute does not mention general ventilation and cooling. However, the requirement of a blower system includes whatever functions the blower, effectively operating, will perform, such as the reduction of humidity by changing the air. It would be a strange doctrine to hold that under Section 502 employees in appraising the abnormal danger of working conditions were limited to consider only the purposes of safety equipment expressly described in the statute. The heat and humidity, as well as the accumulation of dust, grit and abrasives caused by the failure of the statutory mechanical devices, joined in creating the abnormal danger. The fact that all 17 employees walked out in face of Morley's statement that the blower was operating properly is evidence that the action was "concerted" and the Board was entitled to find that it was taken in good faith belief that the continuation of these conditions was and would be abnormally dangerous.

Moreover, it was not error for the Board to decide that under these circumstances it was immaterial that the bargaining contract contained a no-strike clause. Since Section 502 provides that walking out under a good faith belief of abnormally dangerous conditions does not constitute a strike, the no-strike provision was not applicable. *National Labor Relations Board v. Kohler Company, supra*, does not require a different conclusion. The cases are distinguishable on the facts. Moreover, in the *Kohler* case Section 502 was not relied on nor construed. That section ex-

pressly limits the right of management to require continuance of work under what the employees in good faith believe to be "abnormally dangerous" conditions. The refusal to work here came squarely within the terms of the statute and did not constitute, as held in the *Kohler* case, *supra*, an unlawful insistence on remaining at work on the men's own terms and conditions.

Respondent also attacks the Board's conclusion that respondent's insistence that the grievance concerning the buffer's discharge should be handled through grievance proceedings rather than as a part of the negotiation for a new contract violates Section 8(a)(5) and constitutes refusal to bargain. The trial examiner found to the contrary, basing his conclusion largely upon the decision of this court in *Timken Roller Bearing Company v. National Labor Relations Board*, 161 Fed. (2d) 949, 955. The Board endeavors to distinguish the instant case from the *Timken* case, *supra*, upon the ground that the grievance as to the buffers' discharge had not been disposed of when the contract expired. While there were some factual differences between the *Timken* case and the instant controversy, the grievance there involved, as here, had not been settled and, this court held, the employer's effort to channel the grievances into agreed grievance procedures was not a refusal to bargain. This court approved and follow that case in *National Labor Relations Board v. Standard Oil Company*, 196 Fed. (2d) 892, 895. Here, as there, the duty to bargain could be directed by the parties through contractual agreement and such a contract had been executed. See also *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U. S. 448, in which the Supreme Court reversed a judgment of the Court of Appeals and affirmed a judgment of the District Court which held that, when a grievance arose from the operation of the collective bargaining agreement and while it was in effect, the expiration of the bargaining agreement did not relieve respondent of its contractual obligation to arbitrate. We think the Board erred in deciding that respondent violated Sections 8(a)(5) of the Act in dealing with the grievance.

However, this conclusion does not require that the order be modified, for the Board also found that respondent on October 14 refused to bargain with the union as the representative of the striking employees, in violation of Section 8(a)(5) of the Act. The strike of September 30 was clearly an unfair labor practice strike. The strikers retained their employee status and their bargaining representative was entitled to recognition in their behalf. *National Labor Relations Board v. Deena Artware, Inc.*, 198 Fed. (2d) 645, 651 (C. A. 6), certiorari denied 345 U. S. 906; *National Labor Relations Board v. Pecheur Lozenge Co., Inc.*, 209 Fed. (2d) 393, 403 (C. A. 2), certiorari denied 347 U. S. 953.

It is ordered that a decree shall issue enforcing the Board's order as prayed in the petition.

ON PETITION FOR REHEARING

PER CURIAM. The only point which requires discussion of the petition for rehearing is respondent's contention that it properly raised before the Trial Examiner the issue as to whether respondent, in violation of Section 8(a)(1) of the National Labor Relations Act, threatened to discharge several employees if they joined the strike. In our opinion we did not consider that issue for the reason that respondent, as shown by citations in the Board's reply brief and not answered by respondent, had failed to file exceptions to the Trial Examiner's findings concerning alleged threats made by Morley, respondent's president, or to the Examiner's conclusion that such threats violated the Act. The Board's reply brief was filed September 3, 1957, and respondent filed no answer thereto. The case was heard by this court October 22, 1957.

Respondent now asserts that it stated at the hearing before us that it took an exception to the finding of the Trial Examiner, quotes the particular exception and states that counsel for petitioner at the hearing agreed that its objection on this point was improper. The appendix contains no exceptions to the Trial Examiner's report, includ-

ing Exception No. 26 now relied on in respondent's petition for rehearing.

The danger of relying upon oral statements and upon claimed agreement with such oral statements, also orally stated, of which no memorandum is furnished the court is apparent.

The important question raised is whether the court has a right to rely upon the joint appendix filed in compliance with Rule 16 of the Revised Rules of this court effective May 1, 1956.

The purpose of the adoption of the rule as to the filing of appendices, whether separate or joint, is that litigants and counsel shall have the advantage of presenting a condensed record for the purpose of saving time and labor in preparation and the expense of printing voluminous transcripts of testimony. The court is entitled to rely upon the appendix as presented. The rules of this court are liberal with respect to the filing of unprinted portions of the record as part of the appendix, even after the printed appendix has been filed. Under Rule 16(6), either party may file typewritten copies of such portions of the record as he desires at any time prior to the call of the case for argument; and such typewritten copies shall be considered as a part of the appendix. In this case respondent had some seven weeks prior to the hearing in the court to file such typewritten addition to the appendix but took no action. The petition for rehearing on this point has no merit.

In any event certain statements of respondent's president made to two employees could properly be considered by the Examiner and the Board as threats constituting coercion. Since the Examiner and the Board so found, there was ample support of the conclusion that respondent violated Section 8(a)(1) of the Act.

All questions raised in the petition for rehearing have been considered. It is ordered that the petition be and it hereby is denied.

APPENDIX B

No. 13116

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

National Labor Relations Board,
— *Petitioner*,
v.
Knight Morley Corporation,
Respondent.

DECREE

(Filed December 18, 1957)

On petition to enforce an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the National Labor Relations Board be enforced as prayed for in its petition.

ORDER DENYING PETITION FOR REHEARING

(Filed February 13, 1958)

The petition for rehearing is denied for the reasons stated in memorandum on petition for rehearing of even date herewith.

APPENDIX C

The relevant provisions of the Labor Management Relations Act, 1947 (29 U. S. C., Sec. 141 *et seq.*) are as follows:

TITLE I—AMENDMENT OF THE NATIONAL LABOR RELATIONS ACT

* * * * *

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8 (a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

Sec. 10 (c) * * * No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals * * * for the enforcement of such order * * * No objection that has not been urged before the Board, its member, agent, or agency shall be considered by the Court * * *.

* * * * *

TITLE V.

* * * * *

SAVING PROVISION

Sec. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.